

time of making thereof, Alexander was fugitive, having closed up his shop four days before, so that he could not prefer one creditor to another who had used more timeous diligence. In respect of all this, especially of the last, the Lords preferred the arrester; and found likewise, that the officer's executions, bearing the arrestment to have been made at such an hour of the day, which was before the hour of the intimation, should make faith, except the other party would improve it.

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1628. July 25 & 30; and 1629, Jan. 30. JAMES STIRLING *against* DAVID OGILVIE.

THERE was an action of reduction of an infestment, pursued by James Stirling against Mr David Ogilvie, *ex capite inhibitionis*. Alleged, That the inhibition was null, because the executions bore him to be inhibit at the market-cross of Forfar; and he offered to prove that he dwelt at the time *alibi*, *viz.* in a part within Kerrimuir, which was a regality by itself; and so he should have been summoned at the head burgh of the regality, conform to the Act of Parliament; which is not done. Replied, That his inhibition could not be taken away by way of exception. The Lords found, that, in respect the exception could not be verified *instante*, but behoved to abide a probation, it could not be received, *hac via*, to take away a standing inhibition; but reserved to the defender his action of reduction, as accords of the law, upon the same reason. Next alleged, The executions of the inhibition were false and feigned. Answered, that if he insisted upon this last, he could not have his action of reduction upon the other exception reserved to him, because, improbation being the last of all exceptions, no other could have place after it. The Lords, notwithstanding, sustained both, in respect the first exception was found not admissible *hoc loco*.

Afterwards, *ultimo Julii*, the defender reformed his allegiance thus: The inhibition was null, because the place of Pitmowis, where the defender dwelt, lay within the regality of Kerrimuir, and the inhibition was not served at the cross of Kerrimuir, but at Forfar. This allegiance was found relevant, and admitted *hoc loco*.

This same matter was again reasoned 30th January 1629, and alleged by the pursuer, that his inhibition could not be taken away by way of exception; in respect it behoved to abide a probation likewise, *viz.* that Kerrimuir was a regality, and that Pitmowis lay within the same. *2do.* The Act of Parliament, 1597, upon which the exception was founded, made not such inhibitions null, *ope exceptionis*, but said only they shall be null, which is *canon ferendæ sententiæ, non latae*. *3tio.* Alleged, *a simile*, of hornings that are null by the same Act, not being registrat in the books of the sheriffdom or stewartry where the rebel dwelleth, and yet an allegiance proponed that a horning was registrat in another stewartry, &c. never received by way of exception: Sicklike in sasines not duly registrat in the place they ought to be in. Nevertheless the Lords, for all this, received the exception, *hoc loco*.

Next alleged, Although it was received, yet it was not relevant to make the inhibition null, in so far as concerned the lands of Freock, which the pursuer

offered to prove lay within the sheriffdom of Forfar, and so the inhibition should stand good for these lands. And for this effect were alleged many inconveniences that might ensue, if it were not sufficient to inhibit a person personally, and at the market-cross of the sheriffdom, &c. where his lands lay, but also that he behoved to be inhibit at the market-cross of the sheriffdom, &c. where his dwelling-place was : Because a man, having all his lands lying in a sheriffdom, might be dwelling in a temple-house, which were hard for the inhibitor to know ; and so his inhibition should be null, if it were not executed also at Torphichen : Sicklike the Bass was instanced, which holds of the king the one half, and the other of the Bishop of St Andrew's. The Lords, in respect of the Act of Parliament, which was plain and strict, sustained the exception.

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1629. *February 4.* HELEN STRACHAN *against* The LAIRD of CRAIGIEVAR.

CRAIGIEVAR having granted a bond of 2300 merks to Mr James Irvine and Helen Strachan his spouse, and to the longest liver of them two ; she, after Mr James her husband's decease, charged for payment. Craigievar suspended upon this reason, That he was forced to pay a far greater sum for Sir William Irvine, for which he and Mr James were cautioners, and Mr James obliged for his relief ; in respect whereof he ought to compensate that sum with the other, which Mr James could not eschew, if he were alive ; and no more his wife. The Lords thought it could not compensate, in respect of the bond made to him and her, and which was made before that other wherein he and Mr James were cautioners.

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1629. *February 7.* The BAILIES of IRVINE, Petitioners.

THERE was a supplication, given in by the Bailies of Irvine, making mention that there was an action pursued before them, by one against another, for payment of £80 ; for proving whereof the pursuer was to use witnesses ; whereof some were dwelling in Ireland. Therefore they desired that the Lords would give them power to direct a commission to some person in Ireland, for taking of these men's oaths, if need were ; which they could not do, nor any inferior judge, of themselves, without the Lords' warrant. Which desire the Lords granted.

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1629. *February 10.* JOHN MAXWEL *against* ARCHBALD CRICHTON.

JOHN Maxwel, having obtained decret, before the Earl of Nithisdale's baron-bailie of Eskdale, against Archbald Crichton, did crave the Lords' decret,